

REMARKS

Status of Claims:

Claims 1-6, 8-11, 17, 19, and 23-33 are rejected.

This response amends claims 1 and 9, and cancels claims 25-33.

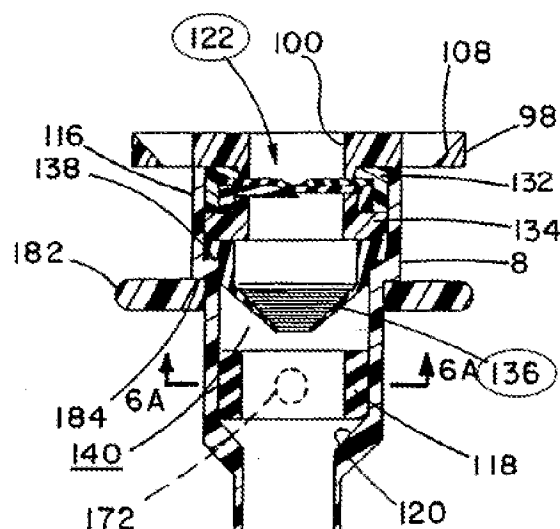
Claims 1-6, 8-11, 17, 19, and 23-24 remain pending.

Claims 1 and 9 are amended to include recitation of a zero closure valve. Support is found in the specification and drawings as filed, such as for instance at Figure 7 and paragraph 0022 on page 6. No new matter is added.

The amendment of Claims 1 and 9 is made to assist the Examiner in better understanding the subject matter claimed in this application. The amendment does not indicate agreement with the Examiner's rejections, and Applicant reserves the right to file one or more continuation applications with claims originally or previously presented.

The Office Action September 2, 2009 reject Claims 1, 6, 8-9, 17, 23-37 and 29-32 as obvious over Haber (5,385,552). This rejection is improper for at least the following reasons.

A portion of Figure 4 of Haber is set forth below for reference



The Examiner has Mischaracterized Haber:

First, the Examiner's rejection relies upon multiple mischaracterizations of Haber.

The Examiner's rejection at page 3 states that Haber discloses a seal assembly 122 with various components including :

"...four separate semicircular seal segments 126, compressed therebetween, each having a circumference of 180 degrees, and arranged circumferentially about an *aperture* in an alternating over and under pattern in a non-planar shape...., and *circumscribing an aperture* in an interwoven pattern and cooperating to seal against objects positioned within the aperture, ..."

This is simply not the case.

As can be seen in the Figure from Haber, above, Haber does not show seal segments arranged about an aperture as the Examiner maintains.

Instead, Haber teaches a proximal seal 122 made from elastomeric sealing elements 124a/124b/124c/124d. (see column 5, line 45 to column 6, line 5). The seal elements 124 have a body portion 126. The elements 124/126 of Haber are not shown arranged about an aperture.

Haber's own disclosure indicates that the seal elements 124 seal the path when an object is **not positioned** along the path of insertion. (See Abstract of Haber, as well as column 6, lines 1-2 which explains the seal 122 provides an "effective seal when the obturator body 58 is removed from the trocar body 4 as in Figure 4.")

Accordingly, Haber does not teach or suggest the seal assembly 122 or seal elements 124 or body portions 126 are arranged *about an aperture*.

Note that if that were the case, (and if the Examiner's characterization were correct) then the seal assembly 122 of Haber would not be capable of providing its intended function, because insufflation gas would leak through the aperture (in the absence of the obturator), and therefore would not provide an "effective seal" as Haber desires and describes at the top of Haber's column 6.

If the Examiner disagrees and maintains the rejection, then the Examiner is respectfully requested to point out specifically in Haber's drawings where seal elements 124 are arranged around an aperture in a non- final rejection to provide Applicant with a full and fair opportunity to respond.

The Examiner again mischaracterizes Haber's disclosure by stating at Page 3, that:

“each seal segment overlaps and is positioned on top of the ending edge of the adjacent seal segment, *and the seal segments cooperate to seal against objects or instruments positioned within the aperture.*” (Italics added)

Again, this is simply not correct in view of Haber's own disclosure.

As noted above, Haber's own Abstract explains that the sealing elements 124 seal the path when an object such as a trocar barrel is not positioned along the path.

Moreover, Haber employs a different seal for sealing against objects positioned within the path provided by the trocar. Haber discloses a conical sealing element 136 which includes a conical portion 152 having an opening 158 sized to be somewhat smaller than objects (such as an obturator) placed through the trocar so that seal element 136 provides sealing about the obturator or instruments inserted in the trocar. (See Column 6, lines 28-41 of Haber.)

Accordingly, the Examiner mischaracterizes Haber in at least two ways:

- A. By stating that the seal segments 122/126 are arranged about an aperture.
- B. By stating that seal segments 122/126 cooperate to seal against objects or instruments positioned within the “aperture”

In view of these mischaracterization of Haber by the Examiner, and for this reason alone, the rejections of all the pending claims should be withdrawn.

The Examiner proposed modification is contrary to Haber's own Disclosure

Second, the Examiner's rejection proposes a modification to Haber which ignores Haber's own disclosure.

The Examiner states in the first full paragraph on Page 3 of the rejection that:

"Haber does not expressly disclose each seal segment 126 being gas tight or sufficiently sealing against instruments positioned through the seal to maintain gas pressure in the abdominal cavity during endoscopic procedures. However, it would have occurred to one of ordinary skill in the art to form a tighter seal that would prevent fluid from escaping out the top of the cannula whether an instrument is present in the cannula or not.

This ignores the express teaching of Haber that Haber employs a separate seal, conical sealing element 136, to "sufficiently seal" against instruments. It is respectfully urged that there would be no motivation by someone of skill in the art to modify Haber's seal 122 as the Examiner suggests where Haber expressly teaches use of a different seal (sealing element 136) to provide sealing against objects and instruments inserted through the trocar.

Haber's own abstract teaches the following:

"...at least three interleaved elastomeric sealing elements (124) which seal the path when an object, such as an obturator barrel (14), *is not positioned along the path*. The gas sealing assembly also includes a flexible, elastic, conical element (136) with a hole (158) at its tip and raised edges or rings (164) along its inner surface (154) for sealing the path *when an object is positioned along the path*." (Italics added)

So, there would be no motivation to modify the seal elements 124 to provide a seal around an object, as suggested by the Examiner, because Haber teaches using a conical element 136 that has a hole in its tip and provides a seal when an object is positioned in the path of Haber's trocar.

Accordingly, the Examiner has ignored Haber's own disclosure, and instead relied on improper hindsight reliance on the Applicant's disclosure to support the Examiner's proposed modification of Haber's device.

Regarding Claim 9:

Haber does not teach a plurality of layered elastomeric members arranged about an aperture in an alternating over and under pattern, nor such elements cooperatively sealing against instruments positioned through the aperture.

Haber's own disclosure states the elements 124 seal the path when no instrument is positioned along the path, and so the elements 124 of Haber would not be arranged about an aperture, because such an aperture would provide a direct leak path, and would prevent sealing when no instrument is positioned along the path. The Examiner's position that Haber teaches elements 124 are positioned around an aperture is clearly incorrect. Further, one would not modify Haber to have such a feature because such a modification would result in the intended function of the elements 124 to be inoperative!

Regarding Claim 17:

Haber doesn't teach or suggest a plurality of semicircular elastomeric members circumscribing an aperture in an interwoven pattern, nor such members cooperating to seal against objects positioned within the aperture. As noted above, Haber's own disclosure state the elements 124 provide a seal in the path when no instrument is positioned in the path. This clearly is different from Claim 17, and if one were to somehow modify Haber to meet all the elements of claim 17, the very purpose of Haber's elements 124 would be destroyed!

Claim 25:

Haber does not teach or suggest a plurality of resilient seal segments circumscribing an aperture. Also, as noted above, one would not modify Haber's elements 124 to circumscribe an aperture, because to do so would destroy the very purpose of Haber's elements 124! Having the elements 124 circumscribe an aperture would permit a leak path through the aperture when no instrument is in the path of Haber's trocar, and Haber specifically requires that the elements 124 provide a seal when there is not instrument in the trocar.

Again, as Haber's Abstract explains:

"...at least three interleaved elastomeric sealing elements (124) which seal the path when an object, such as an obturator barrel (14), *is not positioned along the path*. Italics added.

Rejection Based on Haber in view of Honaken:

The Office Action September 2, 2009 reject Claims 2-3, 10-11, 19, 28, and 33 as obvious over Haber as applied to Claims 1, 9-10, 17, and 25, and further in view of Honaken (4,655,752). This rejection is improper for at least the following reasons.

First, the rejection is improper because the Examiner has misapplied Haber to the Claims 1, 9-10, 17, and 25, for at least the reasons set forth above.

Second, the Examiner's reason for modifying Haber by the teachings of Honaken is contrary to Haber's own teaching.

The Examiner states at page 4 of the rejection:

“It would have been obvious to one of ordinary skill in the art at the time of the invention to provide a non-planar-shaped elastomeric members, as taught by Hokanen, to Haber in order to facilitate a secure adhesion to the inserted instrument.”

This reason assumes incorrectly that Haber would want to facilitate a secure adhesion of the seal assembly 122 to an instrument. It is respectfully urged that there is no basis for such an assumption, and that such an assumption is incorrect and contrary to Haber’s own teaching where Haber specifically states the purpose of seal 122 is to provide sealing when there is no obturator or instrument in the trocar.

Rejection Based on Haber in view of Hart

Claims 4-5 are rejected as obvious over Haber in view of Hart. It is respectfully urged this rejection is improper for at least the reasons set forth above with respect to the Examiner’s application of Haber to Claim 1.

Copending Applications

The Examiner should note the following copending United States patent applications:

Application

10/687502

10/943215

10/943214

10/943221

10/943222

10/943220

11/217673

10/943218

10/943213

The Examiner is encouraged to review each of these file wrappers, including the pending claims, all art of record, and any rejections. Details of these cases are available through PAIR and the Office's databases. No representation is made or intended that the foregoing cases are material to patentability of the present claims, or that the foregoing list is comprehensive.

Conclusion

Based on the foregoing, all of the pending claims are in a condition for allowance. Applicants traverse all rejections and request reconsideration, and Applicants request an early notice of allowability.

Respectfully submitted,

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